F.C.C. 76-377

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Docket No. 19528

In the Matter of

PROPOSALS FOR NEW OR REVISED CLASSES OF INTERSTATE AND FOREIGN MESSAGE TOLL TELEPHONE SERVICE (MTS) AND WIDE AREA TELEPHONE SERVICE (WATS)

Memorandum Opinion and Order

(Adopted: April 27, 1976; Released: April 28, 1976)

BY THE COMMISSION: COMMISSIONER QUELLO CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT IN WHICH COMMISSIONER HOOKS JOINS; COMMISSIONER WASHBURN ABSENT.

1. In a First Report and Order in this proceeding (November Order), 56 FCC 2d 593 (1975), the Commission established a registration program designed to allow users of the nationwide telephone network to connect terminal equipment other than PBXs, key telephone equipment, main telephones and coin telephones to the network without the need for carrier-supplied protective couplers, provided that such equipment complies with standards incorporated into the registration program to protect the network against harm. This program was made applicable both to equipment provided by users (customer-supplied equipment) and to equipment provided by telephone companies (carrier-supplied equipment).[1] On February 13, 1976, the Commission issued a Memorandum Opinion and Order (FCC 76-134) (hereafter, February Order) in reconsideration of the November Order which generally affirmed the conclusions and principles of the November Order, but which established

[1] 56 FCC 2d at 601.

certain "grandfather" provisions concerning equipment installed during a transition period established for phasing in registration of terminal equipment. In a Second Report and Order released March 18, 1976 (FCC 76–242) (hereafter, March 18 Order), the Commission extended the registration program to PBXs, key telephone equipment and main telephones (leaving coin telephones and equipment connected with party-line telephone service excluded from the scope of the registration program).

2. We have before us two Petitions for Declaratory Ruling filed, respectively, by Rixon, Incorporated (Rixon) and National Telephone Cooperative Association (NTCA) requesting clarification of the "grandfathering" and transition period requirements of Part 68 of the Commission's Rules, and of certain other provisions of these rules. Rixon, a manufacturer of data equipment which it has supplied to Independent telephone companies for direct connection to the telephone network, is concerned with the effect of the "grandfathering" and transition period requirements as applied to equipment which it supplies to these telephone companies. NTCA raises similar concerns from the vantage point of a trade association of telephone companies, as well as other concerns which are addressed herein. No entities filed comments on Rixon's petition. The Bell System companies filed a "Response" to NTCA's petition.[2] Because the issues raised by these petitions are related, both petitions (and responsive pleadings) will be addressed herein.

"Grandfathering"

3. As amended by the February and March 18 Orders, Section 68.2(b) and (c) of the Rules provides that:

(b) Unless otherwise ordered by the Commission, all items of equipment, other than PBX and key tele-

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[2] A late response was filed by the North American Telephone Association (NATA). We hereby grant NATA's petition to file this response and will consider it herein. Also received is NTCA's reply to NATA's response.

phone equipment, of a type directly connected to the network as of May 1, 1976 may be connected thereafter up to January 1, 1977—and may remain connected for life—without registration, unless subsequently modified.

(c) Unless otherwise ordered by the Commission, all PBX and key telephone equipment of a type directly connected to the network as of August 1, 1976 may be connected thereafter up to January 1, 1977—and may remain connected for life—without registration, unless subsequently modified.

4. Rixon argues that this language is ambiguous, primarily because "may remain connected" implies continuous connection of a grandfathered item of equipment, without surcease, and therefore grandfathered status would be lost if such an item of equipment were to be removed for repair, or for reinstallation on the same or another customer premise. Also, Rixon argues that "unless subsequently modified" could be interpreted as meaning that repair of a grandfathered item might cause its status to change, if repair operations could be interpreted as "modification."

5. NTCA is concerned with our use of the language "of a type." In NTCA's view, this language might apply to customer-owned equipment connected to the telephone network in violation of FCC-filed tariffs prior to May 1, 1976, and therefore could accord grandfathered status to such equipment. Also, NTCA is concerned that "of a type" might be construed as rather broadly referring to generic classes of equipment (e.g., all items in the class "telephone set"). Finally, NTCA seeks clarification of the grandfathered status of equipment which is removed for repair and/or rehabilitation.

6. Our grandfathering language, which is set out in paragraph 3 above, provides both customers and telephone companies an alternative under which certain *nonregistered* telephone terminal equipment may be connected to the tele-

phone network during a limited transition period commencing with the effective date[3] of the Part 68 Rules and ending on January 1, 1977. As was stated in our February Order, one of the primary purposes of providing this alternative was "to afford proper recognition to the millions of items of terminal equipment—produced by both carrier-affiliated and independent manufacturers—which are now and have been directly connected to the network with no evidence of having caused harm thereto." While this statement alone might have been construed as applying only to telephone company-provided equipment, it should be clear from both the general findings and specific text of the February Order that this alternative is equally applicable to customer-provided terminal equipment. To hold otherwise would be to continue the unjust and unreasonable discrimination which we have found to exist between provisions for connecting telephone company-provided equipment and customer-provided equipment.

7. In the context of Section 68.2(b) and (c) of the Rules, the language "directly connected" refers to any direct electrical connection, either by a telephone company or by a customer, made (1) in accordance with the telephone companies' tariffs and (2) without a protective "connecting arrangement." We wish to point out that it is not our intention to sanctify the direct connection of equipment in violation of the carriers' tariffs. Thus terminal equipment which has been directly connected, within the meaning of our rule, includes all equipment supplied by telephone companies (including "connecting arrangements" and "data access arrangements") as well as the following types of customer supplied equipment: attested operators' headsets and conferencing devices, conformed telephone answering devices, equipment certified and connected pursuant to General Order No. 138 of the California Public Utilities Com-

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[3] For PBX and key telephone equipment, the effective date is August 1, 1976; for all other equipment, the effective date is May 1, 1976.

mission, and equipment connected by many "special" entities (e.g., gas, oil, electric, and transportation companies, selected industrial firms, the Department of Defense, the National Aeronautics and Space Administration, and customers in "hazardous or inaccessible locations") pursuant to the various exceptions to the general requirement for telephone company-provided "connecting arrangements" (AT&T's Tariff F.C.C. No. 263, Sections 2.7.5, 2.7.6, 2.7.7 and 2.7.8). Equipment of a type which meets the two requirements stated above is eligible for "grandfathered" status. It matters not whether such "grandfathered" equipment is provided by a telephone company or by a customer. Just as registered equipment may be connected by either, under the same terms and conditions, so too may "grandfathered" equipment be connected by either, under the same terms and conditions. As was stated above, our grandfathered language is for the benefit of both customers and carriers alike.

8. Our use of the language "of a type" generally means the same model of equipment made by the same manufacturer. Thus it is intended to mean equipment of the same mechanical and electrical design. It does not refer to a generic description (e.g., "telephone set") or to an industry-wide generic type designation (e.g., "500 set," a standard telephone set manufactured by several domestic manufacturers including Western Electric, Stromberg-Carlson and ITT Kellogg). "Of a type," however, does refer to cosmetic variations of a manufacturer's product (e.g., both a white and beige "500 set" telephone instrument by the same manufacturer would be of the same type).

9. The phrase "may remain connected" is clearly intended as a permissive privilege of grandfathered status, not as a condition precedent to the retention of such status. Once an item of equipment is grandfathered by connection prior to January 1, 1977, it will retain that status, regardless of disconnection or reconnection at the same or another premise, and regardless of repair operations which re-

store it to the same functional operation it had prior to the failure which resulted in the repair operation. "Unless subsequently modified" is not intended to limit routine repairs of this nature. It is intended to cause grandfathered status to be lost if components in previously-grandfathered equipment are replaced during a repair operation with components which are not comparable to the original ones.

10. Section 68.106 of our Rules requires customers, before connecting terminal equipment, to notify the telephone company that such connection is being made and to provide the telephone company the F.C.C. Registration Number and the Ringer Equivalence Number. Of course, in the case of grandfathered equipment, the F.C.C. Registration Number and the Ringer Equivalence Number are not available. However, the customer is still obligated to notify the telephone company of intended connections of grandfathered equipment, and to provide sufficient identifying information (e.g., manufacturer's name, model and serial numbers, etc.) to enable the carrier to determine that the equipment is indeed of a type which has been grandfathered. In order to simplify the determination of whether a certain type of nonregistered terminal equipment is grandfathered, the Commission will maintain a list of all terminal equipment which is eligible for grandfathering. This list will be compiled from lists which we will require the carriers to furnish us, containing sufficient descriptive information to identify all terminal equipment which the carriers are aware of which is directly connected to the telephone network as of May 1, 1976.[4] The composite list thus established shall serve as the basis for determining the grandfather status of both carrier-supplied and customer-supplied equipment.[5]

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[4] For PBXs and key telephone equipment, the relevant date is August 1, 1976.

[5] While we shall expect the initial lists to be as comprehensive as possible, additions and/or deletions should be filed on a continuing basis, promptly upon their identification.

Repairs

11. Section 68.216 of the Rules requires repairs to registered equipment to be performed by the equipment manufacturer, or its authorized agent. NTCA wishes clarification as to whether this rule applies to telephone companies which traditionally repair equipment which they purchase. Considering the telephone companies' claimed expertise in preventing "harm," as set forth in the Docket No. 19528 proceedings, we believe that such formal authority is unnecessary. We will not require the telephone companies to enter into any formal agency relationship with their suppliers.

12. One additional problem which is raised relates to a present practice of telephone equipment refurbishment. Equipment refurbishers typically repair telephone equipment by assembling sub-equipments of different manufacturers.[6] We view such refurbishment in a manner which is consistent with our view of "unless subsequently modified" as that term is applied to grandfathering. That is, if components are replaced with comparable components during refurbishment, the continuing validity of the equipment registration is unquestioned so long as the refurbishment is done by an authorized agent of the manufacturer (or registration grantee).[7] In the case of equipment which is repaired by replacement of components which are themselves part and parcel of equipment registration (e.g., components which are used in equipment which is registered

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[6] As was mentioned earlier, there are several manufacturers who produce substantially similar "500 sets," for example. Many of the components in these sets are interchangeable. Thus, while a set of new manufacture was assembled under the manufacturer's control, a refurbished set may contain components of some or all of these manufacturers.

[7] If the refurbishment is done by one who is not an authorized agent, the refurbisher itself will have to register its work product.

by another manufacturer), it is clear that no harm will result.

Plugs and Jacks

13. Registered equipment is required to be connected to the telephone network through means of connection specified in Part 68 of the Rules. Equipment other than PBX and key telephone equipment is required to be connected through the use of standard plugs and telephone company-installed jacks. NTCA requests clarification as to whether equipment which is connected by the telephone companies during the transition period is required to be connected through the use of such plugs and jacks. We are not requiring such equipment to be connected during the transition period using standard plugs and jacks. Telephone companies may continue to use whatever means of connection they are presently using for the connection of terminal equipment which they supply, provided that they do not discriminate in the treatment of customer-provided equipment. Both registered terminal equipment and grandfathered equipment must be accorded the rights of connection specified in Part 68—through a telephone company-installed standard jack—or, if such means are not available immediately upon the customer's request, the telephone company must permit connection of such terminal equipment through alternative means. Such means may be a non-standard plug and jack, an adapter, or hard-wiring to a connection block. In any event, if a telephone company is unable to install a standard jack upon reasonable request of its customer during the phasing-in period, the customer should not be required to incur any expenses which a customer using similar telephone company-provided equipment does not incur. Once terminal equipment has been installed through other than a standard plug and jack, the telephone company need not make a special service call to replace such installation with a standard plug and jack; such changeover may be done in the routine course of business.

Other Matters

14. NTCA wishes clarification of the meaning of "extentension telephone" and wishes to know if that term refers to remote telephone sets used with PBX and key telephone common equipment. We regard such instruments as part of the PBX and key systems with regard to the effective date of including such equipment within the scope of Part 68 (specified as August 1, 1976 in the March 18 Order).

15. NTCA seeks clarification as to whether telephone companies can require the use of a permanently installed telephone ringer with user-provided main stations using standard plugs and jacks. Section 68.104 exempts such permanently installed ringers from the plug and jack requirement. As was indicated in paragraph 49 of the November Order, 56 FCC 2d at 611, we regard this as a customer option, and not as a telephone company requirement. If the customer desires a ringer which is not subject to accidental disconnection through inadvertent withdrawal of a plug, our rules accommodate such a desire. We do not view our permissive exception as permitting this to become a telephone company requirement on customers.

16. NTCA requests the Commission to treat certain telephone services provided over "station carrier" systems as party line service under Part 68. Party line service is presently excluded from the application of Part 68 because technical equipment failures of equipment used on single-party line service which only would interfere with the *user's* telephone service, might interfere with *other parties'* telephone service on a party line. Although the service provided on these "station carrier" systems is considered single-party service in exchange tariffs, and thus would be included within Part 68, NTCA alleges that "harm" to other users of such a "station carrier" could occur by equipment designs which comply with the specifications of equipment registered in accordance with Part 68, and therefore such "station carrier"systems should be treated as if they were

traditional party lines (where simultaneous use by various parties is not possible).

17. In support of this new position, NTCA exemplifies such alleged harm with the following statement:

> Customers with single party service provided by station carrier can cause "harm" to other customers on the same service, for example if equipment with excessive current demand is utilized, another subscriber's battery could become depleted, thus making his service inoperable.

In view of the many procedural opportunities in which appropriate specifications on equipment used with "station carrier" systems could have been brought before this Commission since Docket No. 19528 was instituted in 1972, we will not deny indefinitely the right of connecting registered equipment to users who happen to have service provided on a "station carrier" system, based upon NTCA's unsupported allegation. NTCA may file a Petition for Rulemaking with appropriate documentation if it wishes to address such a problem. If a user connects equipment which does, in fact, have the effect of interfering with the telephone service of another user of a "station carrier," the telephone company can temporarily discontinue service to the offending user's equipment, consistent with Section 68.110 of our Rules.

18. We wish to address the relationship between our "beep-tone" requirements and our new Part 68 rules. In 1947, the Commission ruled that the telephone companies should revise their tariffs to permit the recording of two-way conversations through the use of customer-supplied recording devices, provided that an automatic tone warning device, supplied by the telephone company, is used in conjunction with such recording devices.[8] The Commission im-

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[8] For exceptions to this general policy, see *Use of Recording Devices in Connection with Telephone Service (Broadcast of Two-Way Telephone Conversations)*, 38 FCC 2d 579 (1972),

posed the "beep-tone" requirement because it was "keenly appreciative of the importance and desirability of privacy in telephone conversations," and believed that telephone conversations, "should be free from any listening-in by others that is not done with the knowledge and authorization of the parties to the call. . . ." *Use of Recording Devices in Connection with Telephone Service, Docket No. 6787,* 11 FCC 1033 (1947); 12 FCC 1005 (1947); 12 FCC 1008 (1948). On March 28, 1951, the Commission released a "Statement with Respect to Use of Telephone Recording Devices," in which it acknowledged that, "no tone-warning device has yet been developed which is able to give a warning tone on the telephone circuit when being used with an inductive type recorder." (Inductively and acoustically coupled recording devices are distinguished from electrically coupled recorders by their lack of direct physical connection to the telephone line.) In this statement, the Commission directed that until tone-warning devices are available for use with inductive recorders, the use of such recorders in connection with interstate and foreign telephone service would be contrary to its previous orders.

19. Since our 1947 *Recording Devices* decisions require the telephone companies to provide the automatic "beep-tone" warning device (which is incorporated into their connecting arrangements), they are inconsistent with our recent rulings in Docket No. 19528, which prohibit the carriers from requiring customers to use connecting arrangements with F.C.C. registered equipment. In view of this we will not require the "beep-tone" warning device to be provided by the telephone company, where a customer wishes to directly connect an F.C.C. registered recording device to the telephone network. We are not however, at this time, modifying the basic requirement that a "beep-tone" be used when recording two-way conversations. The "beep-

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and *Use of Recording Devices in Connection with Telephone Service (Telephone Calls referred to United States Secret Service),* 50 FCC 2d 905 (1975).

tone" requirement is independent of Part 68, which addresses harm to the telephone network, and telephone users who employ recording devices which record two-way telephone conversations are still required to supply an appropriate "beep-tone." Of course a "beep-tone" which is generated in registered equipment, or in equipment used with registered equipment, is required to conform to our signal power limitations (Section 68.308).

20. We wish to address one final matter on our own motion. In the November Order, Section 68.2 contained the sentence: "Terminal equipment as used in this Part includes terminal equipment and/or systems." When this section was subsequently revised by our February and March 18 Orders, this sentence was omitted. We wish to make clear that this omission was inadvertent and was not intended to restrict the scope of Part 68. As used in Part 68, the term "terminal equipment" includes terminal equipment and/or systems. With this clarification, we do not believe it is necessary to amend our Part 68 rules.

Order

21. In view of the foregoing, IT IS ORDERED, That the Petitions for Declaratory Ruling filed by Rixon, Inc. and the National Telephone Cooperative Association ARE GRANTED to the extent indicated herein and ARE OTHERWISE DENIED.

22. IT IS FURTHER ORDERED, That all telephone companies shall file within 30 days of the release date of this Order, lists containing sufficient descriptive information to identify all terminal equipment which the carriers are aware of which is directly connected to the telephone network as of May 1, 1976.[9]

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*

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[9] For PBX and key telephone equipment, such lists shall be filed by August 1, 1976, and shall relate to PBX and key telephone equipment connected as of August 1, 1976.

STATEMENT OF COMMISSIONER JAMES H. QUELLO CONCURRING IN PART AND DISSENTING IN PART IN WHICH COMMISSIONER BENJAMIN L. HOOKS JOINS *

In Re: Docket 19528, April 27, 1976

I have no quarrel with this order insofar as it clarifies our rules with regard to the registration of terminal equipment other than PBX's, key telephone equipment, main telephones and coin telephones. Therefore, I concur with that portion of the order.

My concern continues to be the haste with which we moved to include all terminal equipment absent relevant data bearing on the potential economic impact upon the telephone network and upon the ratepaying public. My dissent to the inclusion at this time of PBX's, key sets, main telephones and coin telephones goes to the substance of that action and not merely to the clarification contained within this order.

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* Commissioner Hooks has issued separate statements in Docket 19528 (FCC 76-134, February 13, 1976 and FCC 76-242, March 18, 1976) which elaborate on his individual views.